

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 91-216-E - ORDER NO. 91-878

OCTOBER 9, 1991

IN RE:	Application of Duke Power Company for an Increase in its Electric Rates and Charges) ORDER RULING ON) PETITION FOR) RECONSIDERATION
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This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Petition for Reconsideration of Order No. 91-775 issued in the instant docket and filed on behalf of Steven W. Hamm, Consumer Advocate for the State of South Carolina (the Consumer Advocate). In support of its Petition, the Consumer Advocate states that it has certain objections to Commission Order No. 91-775 which granted a Staff Motion for a prehearing conference in the above referenced matter.

The purpose of the conference, as stated in the Order, was to require all parties to attend and set forth all issues to be raised by the parties at the hearing scheduled in this matter to commence September 23, 1991. An additional purpose of the prehearing conference was to discuss any procedural matters, the hearing schedule, and the need to schedule any witnesses for a time certain, among other things. The Commission determined in Order No. 91-775 that the prehearing conference would afford all parties an opportunity to identify the issues anticipated to be raised at the hearing and for an

orderly administration of the hearing. The Commission further encouraged the parties of record attending the prehearing conference to attempt to narrow the issues before hearing. Order No. 91-775 further provided that "the issues not raised at the prehearing conference may not be raised after the hearing without permission granted by the Commission. However, parties of record may ask the Commission for permission to raise an issue that arises after the prehearing conference through discovery or other means or as a result of testimony adduced during the hearing. The Commission will determine if good cause exists for the addition of an issue". Order No. 91-775, p.2.

The Consumer Advocate points out in his Petition that he was denied his constitutional right to due process of law, in that he was not provided an opportunity to file a Return to Staff's Motion prior to the Commission's ruling on the Motion. Additionally, the Consumer Advocate did not object to the prehearing conference insofar as it sought to discuss any procedural matters, the hearing schedule, and the need to schedule a time certain for some witnesses and to identify and narrow issues for the hearing. The Consumer Advocate did, however, object to the Order's attempt to bind the parties to the issues raised at the prehearing conference, with the exception that if issues raised after the prehearing conference through discovery or other means or through testimony adduced at the hearing, a party must ask the Commission's permission to raise the issue, and the Commission will then determine if good cause exists for the addition of the issue. The Consumer Advocate does not believe that it is in the best interests of

the consumers to be bound only to the issues raised at the prehearing conference. The Consumer Advocate points out that on occasion, issues develop during hearings which are relevant to the rate increase requested. The Consumer Advocate believes that issues such as these should be allowed to be explored at the hearing and does not believe that he should be required to ask the Commission's permission to raise any issue which was not specifically raised at the prehearing conference. The Consumer Advocate asserts that the Commission's approach would have the affect of improperly shifting the burden of proof to parties other than the applicant.

The Commission has thoroughly considered the points raised by the Consumer Advocate and is of the opinion that a prehearing conference in which the parties meet to discuss the issues, as well as other matters is an appropriate proceeding, particularly in a rate case where there are a multitude of potential issues that may be raised. The Commission further finds that the parties are encouraged to narrow any issues and resolve any differences through this prehearing conference forum. Upon reconsideration, however, the Commission has determined that it will not require any party to request permission to raise any issue after the prehearing conference. This could, as pointed out by the Consumer Advocate, tend to shift the burden of proof from the applicant to a party wishing to raise an issue. While the Commission is of the opinion that any party should be allowed to raise

any relevant issue during a proceeding, the Commission would encourage the parties participating before the Commission to endeavor to identify issues as they arise before the close of the hearing. This way, as a party cross-examines a witness, the areas of cross-examination would identify issues and of course, a party of record could object to any issues raised that are not relevant to the proceeding. Additionally, parties have the opportunity through post hearing briefs or proposed orders to further clarify any issues that need to be addressed by the Commission in its decision making process.

Therefore, having reconsidered Order No. 91-775 as requested by the Consumer Advocate, the Commission has determined that its permission will not be required for any party to raise an issue after the prehearing conference or before the close of the hearing, but that the parties will endeavor to identify issues as they arise before the close of the hearing. Such issues raised during the hearing would be addressed in any post hearing brief or proposed order that may be filed. All other aspects of Order No. 91-775 will remain in full force and effect as originally promogated.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)